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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/043,699

Filing Date: January 09, 2002

Appellant(s): JACOBS ET AL.

Michael E. Cox
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/12/2006 appealing from the Office action
mailed 1/11/2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 2003/0075600 A1 Struthers et al. Apr. 24, 2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Struthers et al. (US 2003/0075600).

Struthers et al. (hereinafter Struthers) teaches a method and system for fuel dispenser having a guided customer transaction interface, comprising:

Independent Claim

Claim 1. A fuel dispensing system, comprising:

a fuel dispenser; a user interface; a display; and a controller which is operably coupled to the fuel dispenser and adapted to determine a manner in which a user will pay for said fuel [0011];

said controller further adapted to display information on the display as a function of the manner in which the user will pay for said fuel (Fig. 4, items: 100 “Pay Outside” or “Pay Inside”; 202 “Select Card”; 104 “Debit” or “Credit”; 206 “Enter Pin Number”);

wherein at least a portion of the display information is unrelated to the manner in which the user will pay to dispense fuel (Fig. 4, items: 154 “Deli Food”; 402 “64 oz. Soda For \$1.99”; 158 “Subs” or “Hot Dogs” or “Burgers” or “Salads” or “Soups” or “Tacos”).

Furthermore, Struthers explicitly teaches the following type of information which is unrelated to the manner in which the user will pay to dispense fuel:

“...In addition to transaction opportunities, the present method may present advertising promotions and special offers as well as allow the customer to request and display more detailed merchandising information about offered specials.” [0048];

“... Specifically, reconfigurability of the interface allows instantaneous price point changes; customized language options; daily promotions, such as morning, afternoon or evening specials; customer specific marketing, such as lottery promotions for frequent lottery players; service and merchandise promotions, such as for new products and brand promotions; and customer loyalty programs, such as repeat customer incentives, sweepstakes and games.” [0049]; and

“...The inclusion of graphic objects on the large display allows the fuel or retail marketer to show film clips, movies, animated shorts, video advertisements, sports events, photographs and other visual material to enhance its marketing and promotions.” [0057].

Dependent Claims

Claim 2. A network interface operably coupled to the controller and connectable to one or more programming providers; and wherein the controller is adapted to obtain at least some of the displayed information from one or more of the programming providers [0049]; [0050].

Claim 3. Said system as in claim 2, wherein a plurality of programming providers are operably coupled to the network interface; and wherein the controller is adapted to obtain at least some of the displayed information from a plurality of the programming providers [0045]; [0049]; [0050].

Claim 4. Said system, wherein said information advertising and sports events access [0050]; [0057].

Independent Claim

Claim 5. Struthers teaches a method for dispensing fuel, comprising:
determining a manner in which a user of the system will pay to dispense fuel [0062];

obtaining information from one or more remote sources of information [0050]; displaying the information on the display as a function of the manner in which the user will pay to dispense the fuel (Fig. 4, items: 100 “Pay Outside” or “Pay Inside”; 202 “Select Card”; 104 “Debit” or “Credit”; 206 “Enter Pin Number”);

wherein at least a portion of this information is unrelated to the manner in which the user will pay to dispense fuel (Fig. 4, items: 154 “Deli Food”; 402 “64 oz. Soda For \$1.99”; 158 “Subs” or “Hot Dogs” or “Burgers” or “Salads” or “Soups” or “Tacos”).

Furthermore, Struthers explicitly teaches displaying the following type of information, which is unrelated to the manner in which the user will pay to dispense fuel:

“...In addition to transaction opportunities, the present method may present advertising promotions and special offers as well as allow the customer to request and display more detailed merchandising information about offered specials.” [0048];

“...Specifically, reconfigurability of the interface allows instantaneous price point changes; customized language options; daily promotions, such as morning, afternoon or evening specials; customer specific marketing, such as lottery promotions for frequent lottery players; service and merchandise promotions, such as for new products and brand promotions; and customer loyalty programs, such as repeat customer incentives, sweepstakes and games.” [0049]; and

“...The inclusion of graphic objects on the large display allows the fuel or retail marketer to show film clips, movies, animated shorts, video advertisements, sports events, photographs and other visual material to enhance its marketing and promotions.” [0057].

Dependent Claims

Claims 6. Obtaining the displayed information from a plurality of remote sources of information [0049]; [0050].

Claims 7. Obtaining the displayed information from a plurality of remote sources of information [0049]; [0050].

Claim 8. Obtaining at least some of the information from a plurality of remote sources of information [0045]; [0049]; [0050]; and selecting a subset of the information for display, according to the identity of the user [0058]; [0059].

Claim 9. Displaying information on the display as a function of whether or not the user is a preferred (*loyal*) customer (*a tailored customer greeting in a text object, e.g. an individualized loyalty purchases report in a graphics object*) [0058].

Claim 10. Displaying information on the display as a function of the degree to which the is a preferred (loyal) customer (*a tailored customer greeting in a text object, e.g. an individualized loyalty purchases report in a graphics object* e.g. "Since Jun. 1, 2001, Ms. Simmons, you have made \$124.65 of purchases at GasMart and have earned 623 bonus points".) [0058].

Claim 11. Displaying information on the display as a function of vehicle information for the user [0044]; [0050].

Claim 12. Displaying service-related information (seasonal promotions on motor oil or car wash) [0050]; Fig. 4, item 204 "Car Wash".

Claim 13. Displaying information on the display as a function of the display preferences for the user [0049].

Claims 14-19. Maintaining a database which comprises customer related information, including customer identifiers, sales history and product preferences [0058]; [0059]. Information as to *specifics* of the customer related information cannot affect the recited method steps, and, therefore, is non-functional language and given no patentable weight. See: *In re Gulack* 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983) *In re Dembicza* 175 F.3d 994, 1000, 50 USPQ2d 1614, 1618 (Fed. Cir.

1999). The specific example of non-functional descriptive material is provided in MPEP 2106, Section VI: (example 3) a process that differs from the prior art only with respect to non-functional descriptive material that cannot alter how the process steps are to be performed.

Claim 20. Said method, wherein the customer data includes display preferences for the user [0049].

Claim 21. Retrieving one of the customer records associated with the user; and processing the associated customer record to determine what to display on the display [0058]; [0059].

Claim 22. Said method, wherein said information advertising and sports events access [0050]; [0057].

Claim 23. Displaying service-related information (seasonal promotions on motor oil or car wash) [0050]; Fig. 4, item 204 “Car Wash”.

Claim 24. Determining that the user fits a profile for generalized identification of customers [0069].

(10) Response to Argument

In response to the applicant’s argument that Struthers does not teach displaying information on the display as a *function of the manner in which the user will pay to dispense fuel*, it is noted that Struthers explicitly teaches this feature. Specifically, Figure 4 of Struthers teaches that, after welcoming the user, displaying to the user screen objects for selection of a mode of payment, such as “Pay Outside” or “Pay Inside”. Then, in response to the user selection of “Pay Outside” mode, a new screen object is displayed to the user for selection by the user a type of card the user wants to

utilize for current transaction: "Debit" or "Credit" card. Then again, in response to user selection, a new screen object is presented to the user - "Enter Pin Number" (See a discussion above).

In response to the applicant's argument that Struthers does not teach that *at least a portion of said displayed information is unrelated to the manner in which the user will pay to dispense fuel*, Examiner stipulates that Struthers also explicitly teaches this feature. Figure 4 of Struthers teaches that user, in addition to the fuel-related information, is presented with information, which is absolutely unrelated to the manner in which the user will pay to dispense fuel. Specifically, user is presented with advertisement from nearby McDonald's restaurant, such as "64 oz. Soda For \$1.99"; "Subs", "Hot Dogs", "Burgers", "Salads" or "Soups" [0050]. Moreover, Struthers explicitly teaches displaying to the user the following type of "payment unrelated" information: *new products and brand promotions; sweepstakes and games; as well as film clips, movies, animated shorts, video advertisements, sports events and photographs* (See [0048]; [0049] and discussion above).

Furthermore, as correctly pointed out by Applicant (Appeal Brief; page 2, lines 24-25), Specification provides the following example of "payment unrelated" information (Specification; page 5, lines 29-32):

"The controller 110 then provides information for display on the display 104 as a function of the type of payment being used by the customer in step 206 while the customer dispenses fuel. In an exemplary embodiment, the displayed information is unrelated to the manner in which the user will pay to dispense fuel, and thus includes information other than, for example, the menu screens necessary to process payment by the chosen method. The displayed information can include advertising, news, weather, sports."

Clearly, Struthers anticipates said features.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Igor Borissov



Conferees:

John Weiss



John W. Hayes



IB

3/31/2006